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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 229

METROPOLITAN LIFE INSURANCE COMPANY,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

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No. .....

METROPOLITAN LIFE INSURANCE COMPANY,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Metropolitan Life Insurance Company, prays that a writ of certiorari issue to review the decree of the Court of Appeals for the Sixth Circuit entered April 11, 1964, which decree enforces an order of respondent National Labor Relations Board (the "Board") directing petitioner to bargain with the Insurance Workers International Union, AFL-CIO (the "Union").

Citations to Opinions Below

The opinion of the Court of Appeals (Appendix p. 7) is reported at —— F. 2d ——; 55 LRRM 2930. The Board's decision and order to bargain (Appendix p. 14) is reported at 141 NLRB 1074. The Board's decision and direction of election (Appendix p. 27) is reported at 138 NLRB 512.

Metropolitan Life Insurance Company v. *National Labor Relations Board*, decided by the Court of Appeals for the First Circuit on February 17, 1964, is reported at 327 F. 2d 906 and *Metropolitan Life Insurance Company* v. *National Labor Relations Board*, decided by the Court of Appeals for the Third Circuit on February 18, 1964, is reported at 328 F. 2d 820. Copies of these opinions are appended to the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit filed on April 7, 1964 in No. 982, October Term, 1963.

Jurisdiction

The decree of the Court of Appeals (Appendix p. 13) was entered on April 11, 1964. Jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Question Presented

In finding appropriate a collective bargaining unit consisting of district offices maintained by the petitioner both in and out of the City of Cleveland, did the Board treat as controlling the extent to which petitioner's employees had organized, and thereby violate Section 9(c)(5) of the National Labor Relations Act?

Statute Involved

The statutory provision involved is Section 9 of the National Labor Relations Act, as amended (the "Act"), 29 U. S. C. §159, which, so far as material, reads as follows:

"REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) • • •

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in

exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: * * *

(c) (1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

Statement of the Case

The decision below is in direct conflict with the unanimous decision of the Court of Appeals for the First Circuit, *Metropolitan Life Insurance Company* v. *National Labor Relations Board,* 327 F. 2d 906, petition for writ of certiorari pending *sub nom. National Labor Relations Board* v. *Metropolitan Life Insurance Company,* No. 1128, this Term, and is in accord with the unanimous decision of the Third Circuit, *Metropolitan Life Insurance Company* v. *National Labor Relations Board,* 328 F. 2d 820, petition for writ of certiorari pending, No. 982, this Term.

In the case at bar, the Union on January 18, 1962, petitioned the Board for a representation election in a unit consisting of nine district offices operated by the Company in and around Cleveland, Ohio. Six of these offices were located within the city limits of Cleveland and three in adjacent suburban areas (Jt. App. 204a). The reason given by a vice president of the Union for such a grouping of district offices was that if the Union does not succeed in its

efforts to organize all the district offices in a locality it files a petition "on a district basis" (Jt. App. 195a).

The Board found appropriate the unit requested by the Union although it found (Appendix pp. 28-29):

> "The record discloses that the Employer's operations are highly centralized. Detailed instructions and procedures are prepared at the home office which uniformly govern the operations of the district offices and the duties and functions of the agents. No action may be taken which does not comport with these directives, unless specific home office approval is obtained. All agents are appointed, initially trained, and terminated at the home office. All labor relations are centrally conducted and all agents receive uniform wages and fringe benefits. . . ."

Although the Board said that "the individual district office . . . is inherently appropriate for purposes of collective bargaining", citing and relying on *Quaker City Life Insurance Company*, 134 NLRB 960, it nevertheless held that the finding did not prohibit the grouping of such offices where such grouping is "justified by cogent geographic considerations" (Appendix pp. 30-31). Therefore, the Board concluded that the six offices within the city limits of Cleveland and the three nearby suburban offices together constituted an appropriate bargaining unit. Two members dissented upon the ground that "the unit the majority finds appropriate appears to be based upon the Union's extent of organization of these debit agents" (Appendix p. 33).

On October 5, 1962, the Union won the Board-conducted election and on October 12, 1962, it was certified as collective bargaining representative for the employees in the unit. When the petitioner refused to bargain with the Union on the ground that the unit certified by the Board was im-

proper under Section 9 of the Act, it was charged with an unfair labor practice. On February 18, 1963, the Trial Examiner, after a hearing, issued his Intermediate Report (Appendix p. 17), recommending that petitioner be ordered to bargain with the Union. Exceptions were filed and on April 2, 1963, the Board issued its decision and order, ordering petitioner to bargain with the Union in the questioned unit (Appendix p. 14).

Pursuant to Section 10(e) of the Act (29 U. S. C. §160 (e)) and 28 U. S. C. §1212, petitioner sought review of the order of the Board, raising only the question of the legality of the bargaining unit. The Board cross-petitioned for enforcement. In its decision dated April 11, 1964, the Sixth Circuit unanimously held that the Board's order should be enforced (Appendix p. 7). The decree was entered the same day (Appendix p. 13).

In the First Circuit case, *supra,* the Board granted the Union's petition for "an employee unit consisting of the debit agents working out of only its one Woonsocket [Rhode Island] district office" (327 F. 2d at 907). "[T]he Board majority relying on prior decisions determined that one district office out of eight in a small densely populated state constituted an appropriate bargaining unit" (327 F. 2d at 909). The Board's order directing the petitioner to bargain with the Union in that unit was unanimously set aside by the First Circuit and the Board's cross petition for enforcement was denied. That court concluded that in finding the one office unit appropriate, the Board had regarded the "extent of union organization as controlling in violation of §9(c)(5) of the Act" (327 F. 2d at 911).

Reasons for Granting the Writ

Three other Courts of Appeals have passed upon the issue involved in this case. The First Circuit (327 F. 2d 906) found the Board-approved unit violative of Section 9(c)(5). The Third Circuit (328 F. 2d 820) approved the unit found appropriate. In a closely related case, the Fourth Circuit in a two-to-one decision, approved the unit (*National Labor Relations Board* v. *Quaker City Life Insurance Company*, 319 F. 2d 690).

There are now pending before this Court two other petitions for writs of certiorari, one filed by the Board in the First Circuit case (No. 1128), the other filed by the Company in the Third Circuit case (No. 982). The reasons for granting a writ of certiorari have been discussed in the petition in the latter case, to which we respectfully refer the Court. We concur in the Board's position in No. 1128 that the decision in the several circuits are in conflict, and that the determination of bargaining units for agents in the insurance industry is of considerable importance in the administration of the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

BURTON A. ZORN
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GEORGE G. GALLANTZ
MARVIN DICKER
THOMAS F. DELANEY
Of Counsel

June 30, 1964

APPENDIX

The Opinion of the Court of Appeals

No. 15366

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

METROPOLITAN LIFE INSURANCE COMPANY,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside and on Cross Petition for Enforcement of an Order of the National Labor Relations Board.

Decided April 11, 1964.

Before: MILLER and CECIL, Circuit Judges, and McALLISTER, Senior Circuit Judge.

CECIL, Circuit Judge. This case is before the Court upon the petition of the Metropolitan Life Insurance Company to review and set aside an order of the National Labor Relations Board, respondent, issued against the petitioner on April 2, 1963, pursuant to Section 10(c) of the National Labor Relations Act. (Section 160(c), Title 29, U. S. C.) The respondent, by answer, has requested that the order be enforced. The petitioner and the respondent will be referred to hereinafter as the Company and the Board, respectively.

The Board found that the Company violated Section 8(a)(5) and (1) of the Act (Section 158(a)(1) and (5), Title 29, U. S. C.),[1] by refusing to bargain with the union[2] certified as the representative of a group of its employees. The Board's Decision and Order is reported at 141 NLRB 1074. The sole question presented here is whether the Board's determination of an appropriate unit (Section 159(b), Title 29, U. S. C.)[3] was controlled by the extent of union organization in violation of Section 9(c)(5) of the Act. (Section 159(c)(5), Title 29, U. S. C.)[4]

The unit as determined by the Board consists of nine district offices of the Company. Six of these offices are located in the city of Cleveland, Cuyahoga County, Ohio, and three are located in the metropolitan area of Cleveland. The three offices outside of the city of Cleveland are all in Cuyahoga County and are described as follows: Shaker Heights District in Cleveland Heights, Cuyahoga District in Parma and Lakewood District in Rocky River. These suburban offices are within eight to nine miles of the center of Cleveland. The nearest excluded office is in Akron, Summit County, Ohio, thirty miles from the center of Cleveland

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[1] "(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title; . . .

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

[2] Insurance Workers International Union, AFL-CIO.

[3] "(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . ."

[4] "(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling."

and approximately twenty-one miles from the nearest included office in Cuyahoga County.

The district offices are grouped into fourteen territorial divisions by the Company for administrative purposes. Each division is headed by a "superintendent of agencies" who reports directly to a Company vice-president. The offices here involved are in the Central Territory, a division composed of the states of Ohio, Indiana and West Virginia. The superintendent of agencies supervises the district offices in his territory. He maintains constant contact with the district offices and is responsible for: (1) the production of new business; (2) the servicing and conservation of existing business; (3) sales promotion activities; and, (4) recruiting, training, appraisal, appointment, transfer, termination, promotion, demotion and arrangement for retirement of agents, managers and assistant managers. In conjunction with the field management staff officers, he directs the creation and abolition of district offices and the alteration of boundary lines between districts. The superintendent of agencies, within his territory, has the power to alter or amend rules, regulations and the forms of the Company.

Business policy of the Company is formulated at its home office and applied uniformly throughout the country. Applications for insurance are processed only at the home office. All business in Ohio is regulated by the state of Ohio. The Company must qualify to do business in the state and all policy forms must be approved by the State Insurance Department.

The district offices are directed by a manager and one or more assistant managers. Sales and administrative policies are prescribed by the home office and the manager has little discretionary authority. His duties are to administer the office in accordance with the policies set by the Com-

pany from its home office under supervision of the superintendent of agencies. The district manager has no final authority to hire or discharge employees or to process grievances. There is virtually no interchange or transfer of agents among the various district offices.

The Company contends that a unit should be first, the whole of the United States, or, second, an entire division, or, third, an entire state. There are about nine hundred district offices in the United States with approximately 20740 agents. In the Central Territorial Division there are sixty-eight offices with approximately 1556 agents. There are 1012 agents who work out of forty-four offices in the state of Ohio and in the nine offices here involved there are approximately 230 agents.

In 1944, the Board ruled that the smallest appropriate unit for insurance agents would thereafter be state-wide. *Metropolitan Life Ins. Co.*, 56 NLRB 1635. The Board consistently followed this standard until 1961 at which time it changed its policy and determined that a single district office was an appropriate unit for collective bargaining. *Quaker City Life Ins. Co.*, 134 NLRB 960. In that case the Board found that one district office in Alexandria, Virginia, was an appropriate unit. The union won an election and the Board certified it as the bargaining agent for the employees of that office. The Court of Appeals for the Fourth Circuit affirmed. *N. L. R. B.* v. *Quaker City Life Ins. Co.*, 319 F.2d 690.

The Third Circuit upheld the Board in its certification of two out of three district offices in the state of Delaware as an appropriate unit. *Metropolitan Life Ins. Co.* v. *N. L. R. B.*, No. 14390, decided February 18, 1964, . . . F.2d . . . . In this case the Brandywine and Kirkwood offices were in the Wilmington area and the third one was forty-six miles from Wilmington.

The First Circuit denied enforcement of the Board's order where one district office out of ten in Rhode Island was certified as an appropriate unit. *Metropolitan Life Ins. Co.* v. *N. L. R. B.*, 327 F.2d 906. In this case the Board found that the district office in Woonsocket was an appropriate unit. It was twelve miles away from the nearest office of the Company which was in Pawtucket. There were eight district offices and two detached offices in Rhode Island.

The Board has followed this changed policy throughout the country.[5] The Board is not bound by a rule once adopted if it determines subsequently that the reason for the rule fails and it does not act arbitrarily, unreasonably or in violation of the Act. *S. E. C.* v. *Chenery Corp.*, 332 U. S. 194; *N. L. R. B.* v. *National Container Corp.*, 211 F.2d 525, C. A. 2; *Optical Workers' Union* v. *N. L. R. B.*, 227 F.2d 687, C. A. 5, cert. den., 351 U. S. 963; *N. L. R. B.* v. *Pittsburgh Plate Glass Co.*, 270 F.2d 167, C. A. 4, cert. den., 361 U. S. 943. As the court said in *Metropolitan Life Ins. Co.* v. *N. L. R. B.*, No. 14390, C. A. 3, above cited: "It was the Board's informed view that the 1944 Metropolitan rule 'unfairly prejudiced the collective bargaining rights of employees.' There is a vast difference between taking away an obstacle to wider union organization and collective bargaining which is the explicit legislative purpose of the Act, and determining appropriate units on the basis of employee organization."

The Board has the authority under the Act to determine the appropriate unit for collective bargaining. (Section

[5] *Metropolitan Life Ins. Co.*, 144 NLRB No. 15 (Chicago area); *Metropolitan Life Ins. Co.*, 138 NLRB 734 (Iowa-North Dakota-South Dakota); *Equitable Life Ins. Co.*, 138 NLRB 529 (Cleveland area); *Western and Southern Life Ins. Co.*, 138 NLRB 538 (Pennsylvania).

159(b), Title 29, U. S. C.) It has wide discretionary powers in this respect. What is an appropriate unit is a question of fact to be determined by the Board upon the facts of each case. Its decision will not be disturbed except for an abuse of discretion or violation of the statute. *Packard Motor Car Co.* v. *N. L. R. B.*, 330 U. S. 485; *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146; *N. L. R. B.* v. *Prudential Ins. Co.*, 154 F.2d 385, 388, C. A. 6; *N. L. R. B.* v. *Morgantown Full Fashioned Hosiery Co.*, 241 F.2d 913, C. A. 4.

A unit as determined by the Board may be co-extensive with union organization but the Act is not violated unless extent of organization is the controlling motive of the Board in making its determination. The Board found here that the grouping of the nine offices in the Cleveland area was justified by "cogent geographic considerations." It was stated in its opinion: "Therefore, as the Petitioner is seeking a unit comprising all of the Employer's offices in a separate and distinct geographic area in the City of Cleveland, Ohio, and as there is no recent history of collective bargaining and no union seeks a broader unit, we find that such a unit may be appropriate for purposes of collective bargaining." 138 NLRB 512, 515.

We conclude that the extent of union organization was not the controlling reason for the Board's determination of an appropriate unit in this case. Geographical considerations were not "simulated grounds" but the actual basis for the Board's decision. The Board did not violate either subsection (b) or (c)(5) of Section 159, Title 29, U. S. C.

Having determined that the unit for collective bargaining as fixed by the Board is an appropriate unit it follows that the order of the Board (141 NLRB 1074) must be enforced. It is so ordered.

Decree

Filed April 11, 1964

On petition to review and set aside an order of the National Labor Relations Board, and the answer of the Board requesting enforcement of its order:

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board is hereby enforced.

No costs awarded. Rule 23(4).

Approved for entry:

/s/ LESTER L. CECIL
U. S. Circuit Judge.

The Board's Decision and Order to Bargain

141 NLRB No. 96 11-5298

Cleveland, Ohio

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 8-CA-2963

METROPOLITAN LIFE INSURANCE COMPANY

and

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO

DECISION AND ORDER

On February 18, 1963, Trial Examiner Sidney D. Goldberg issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the

entire record in the case, including the Respondent's exceptions, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.[1]

D-5298

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner, with the following modifications:

1. Substitute the following for the last paragraph above the signature line of the Notice in Appendix A to the Intermediate Report:

> WE WILL NOT interfere with the efforts of the INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO, to negotiate for or represent the employees in the said appropriate unit as the exclusive bargaining agent.

Dated, Washington, D. C. APR 2 1963

Frank W. McCulloch, Chairman

Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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[1] Although the Intermediate Report does not state the facts upon which the Trial Examiner relied in finding that the Respondent is engaged in commerce within the meaning of the Act, we note that the Respondent admitted in its answer that it receives in excess of $50,000 in premiums annually at its principal office in New York State from offices located in other States and that it is engaged in commerce within the meaning of the Act. We take notice, moreover, of the fact that the Board has frequently assumed jurisdiction over the Respondent in the past. See, for example, *Metropolitan Life Insurance Company*, 141 NLRB No. 37.

BOYD LEEDOM, MEMBER, dissenting:

In the representation case, *Metropolitan Life Insurance Company*, 138 NLRB No. 64, which is the predicate for the majority decision in this case, the dissent indicated my disagreement with the Board's unit finding. I adhere to the position set forth in the dissent and consequently I would not find that the Respondent violated the Act by refusing to bargain with respect to what I consider to be an inappropriate unit.

Dated, Washington, D. C. APR 2 1963

Boyd Leedom, Member

NATIONAL LABOR RELATIONS BOARD

Intermediate Report

IR-78-63
Cleveland, Ohio

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

Case No. 8-CA-2963

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent,

and

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO,

Charging Party.

John P. Falcone, Esq., and *Bernard Levine, Esq.*, for the General Counsel.

Marvin Dicker, Esq. (Proskauer, Rose, Goetz & Mendelsohn) of New York, N. Y., for the Respondent.

Isaac N. Groner, Esq., of Washington, D. C., for the Charging Party.

Before: *Sidney D. Goldberg*, Trial Examiner.

Statement of the Case

In this proceeding, under Section 10(b) of the National Labor Relations Act (29 U. S. C. Sec. 151 et seq., herein

called the Act), the complaint[1] alleges that Respondent has refused to bargain with the Charging Party (herein called the Union) as the certified collective-bargaining representative of certain of its employees and that Respondent is thereby violating Section 8(a)(5) and (1) of the Act. The record herein amply supports the allegations of the complaint.

On January 22, 1962,[2] the Union requested that Respondent recognize it as the collective-bargaining representative for certain of Respondent's insurance agents attached to the nine district offices in the Cleveland, Ohio, metropolitan area. Respondent refused, stating that the unit designated was inappropriate by reason of its geography. The Union thereupon filed a representation petition (8-RC-4599); a hearing thereon was held and the Regional Director transferred the case to the Board for decision. The Board, by decision dated September 7 (138 NLRB No. 64; Members Rodgers and Leedom dissenting), held that the unit was an appropriate one and directed an election. The Union was designated by a majority of the eligible voters and, on October 12, a certification was duly issued.

By letter dated October 22, the Union requested that Respondent meet with a negotiating committee for the purpose of collective bargaining. By letter dated October 29, Respondent restated its position that the unit was inappropriate and declined to meet and the Union filed the charge herein.

The complaint thereupon issued and a hearing was held before Sidney D. Goldberg, duly designated as Trial Examiner, at Cleveland, Ohio, on January 14, 1963. The General Counsel's request that official notice be taken of all the proceedings and briefs in Case No. 8-RC-4599 was

[1] Issued November 26, 1962, on a charge filed November 5, 1962.

[2] All dates not otherwise designated are in 1962.

granted. No testimony was taken but the Union's written request for a meeting and Respondent's refusal thereof were introduced into evidence.[3]

Respondent, conceding that it could offer no "newly discovered" or "previously unavailable" evidence on the unit question that was not in the record before the Board in the representation proceeding, moved to dismiss the complaint on the ground that the Board had "acted arbitrarily and capriciously in determining a bargaining unit which was clearly inappropriate under Section 9(a) of the Act" and that the Board's determination of the unit "was controlled by the extent to which the employees have organized, in violation of Section 9(c)(5) of the Act." Respondent also moved, on the same grounds, to revoke the certification of the Union.

These motions were denied. As the Supreme Court has stated: "The unit proceeding and this complaint on unfair labor practices are really one." (*Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146, 158). Accordingly, it is fundamental that, absent newly discovered evidence, the issue previously decided herein by the Board may not be relitigated in this proceeding.[4]

On the basis of the entire record in this case, including the representation proceeding, I make the following:

Findings of Fact

1. Respondent, a New York corporation engaged in the sale of life insurance throughout the United States and

[3] Typographical errors in the transcript of proceedings are hereby corrected as set forth in Appendix B.

[4] *N. L. R. B.* v. *West Kentucky Coal Company*, 152 F. 2d 198, 209 (CA 6); *N. L. R. B.* v. *American Steel Buck Corp.*, 227 F. 2d 927, 929 (CA 2); *Air Control Products of St. Petersburg, Inc.*, 139 NLRB No. 29; *Esquire, Inc.*, 109 NLRB 530, 538-9; enforced 222 F. 2d 253 (CA 7); *Baker and Taylor Co.*, 109 NLRB 245.

Canada, maintains a number of offices in the Cleveland, Ohio, metropolitan area.

2. The Union is a labor organization.

3. Upon a petition for certification of representatives, filed by the Union January 18, 1962, the Board, on September 7, 1962, issued a Decision and Direction of Election holding that:

> . . . the following employees of the Employer's [Respondent's] district offices located in the metropolitan Cleveland, Ohio area, including Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side, constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9(b) of the Act:
>
> All canvassing, regular and office account agents of the Employer selling industrial life insurance and other forms of insurance sold by the Employer, excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and all supervisors as defined in the Act.

4. On October 5, 1962, a majority of Respondent's employees in the unit above set forth designated the Union as their representative for the purpose of collective bargaining and the Union was, on October 12, 1962, duly certified as such collective-bargaining representative.

5. Since October 12, 1962, the Union has been and is, the representative for the purposes of collective bargaining of the employees of Respondent in the unit set forth above.

6. Since on or about October 22, 1962, the Union has requested, and continues to request, that Respondent bar-

gain collectively with it as the representative of the employees in the unit set forth above but since on or about October 29, 1962, Respondent has refused, and continues to refuse, so to bargain.

The Effect of the Unfair Labor Practices Upon Commerce

Respondent's said refusal to bargain with the Union, occurring in connection with the operations of Respondent as set forth herein, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Respondent having conceded that it has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees and, it being found herein that the unit involved is an appropriate unit and that Respondent has thereby engaged in unfair labor practices, I shall recommend that Respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. The Employer is engaged in commerce and the Union is a labor organization, within the meaning of the Act.

2. The following employees of Respondent's district offices located in the Metropolitan Cleveland, Ohio, area, including Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side:

All canvassing, regular and office account agents of the Employer selling industrial life insurance and other forms of insurance sold by the Employer, excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and all supervisors as defined in the Act.

constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

3. At all times since October 12, 1962, the Union has been the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit on October 29, 1962, and thereafter, the Respondent has engaged, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By said acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Metropolitan Life Insurance Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Insurance Workers International Union, AFL-CIO, as the exclusive representative of its employees at its Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side district offices in the Cleveland, Ohio, metropolitan area in the appropriate unit described below:

> All canvassing, regular and office account agents of the Employer selling industrial life insurance and other forms of insurance sold by the Employer, excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and all supervisors defined in the Act.

(b) Interfering with the efforts of the Insurance Workers International Union, AFL-CIO, to negotiate for or represent the employees in the said appropriate unit as the exclusive bargaining agent.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Insurance Workers International Union, AFL-CIO, as the exclusive bargaining agent in the appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side district offices in the Cleveland, Ohio, metropolitan area copies of the notice attached hereto and marked "Appendix A."[5] Copies of said notice, to be furnished by the Regional Director for the Eighth Region, after having been duly signed by an authorized representative of the Respondent, shall be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the said Regional Director for the Eighth Region, in writing, within 20 days of the receipt of the Intermediate Report and Recommended Order, what steps it has taken to comply herewith.[6]

Dated at Washington, D. C.

/s/ SIDNEY D. GOLDBERG
Sidney D. Goldberg
Trial Examiner

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[5] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. In the further event of enforcement of the Board's Order by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[6] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

IR-78-63

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER
OF THE NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO, as the exclusive bargaining representative of all employees at the Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side district offices in the Cleveland, Ohio, metropolitan area, in the bargaining unit described below concerning wages, rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

> All canvassing regular and office account agents selling industrial life insurance and other forms of insurance sold by the Company, but excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and all supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively as aforesaid, nor will we, in any like or related manner, inter-

fere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through said union.

METROPOLITAN LIFE INSURANCE COMPANY
(Employer)

Dated ..... By: ....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland 15, Ohio (Tel. No. Main 1-4465), if they have any question concerning this notice or compliance with its provisions.

The Board's Decision and Direction of Election

138 NLRB No. 64

D-4052
Cleveland, Ohio

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 8-RC-4599

METROPOLITAN LIFE INSURANCE COMPANY,

Employer,

and

INSURANCE WORKERS INTERNATIONAL UNION, AFL-CIO,

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Arthur R. Mattson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record[1] in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

[1] Because, in our opinion, the record and briefs adequately set forth the issues and positions of the parties, the Employer's request for oral argument is hereby denied.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The appropriate unit:

The Petitioner seeks a unit of debit insurance agents at the Employer's nine district offices located in the Cleveland, Ohio, metropolitan area. The Employer is in agreement with Petitioner regarding the unit inclusions and exclusions, but contends that Petitioner's unit is too limited in scope. The Employer's position is that the only appropriate units in this instance would encompass either: (1) all its offices in the United States; (2) all offices in its Central Territory; or (3) all its offices in the State of Ohio.

The Employer is engaged in the sale and issuance of various types of insurance policies and does business throughout the United States and Canada. It maintains its principal office in New York, New York, and, for administrative purposes, it has divided its offices throughout the United States into 14 territorial divisions. Each such division is headed by a superintendent of agencies who reports directly to a Company vice president. The offices involved in the instant petition are all located in the Employer's Central Territory, which encompasses 68 offices in the States of Ohio, Indiana and West Virginia.

The record discloses that the Employer's operations are highly centralized. Detailed instructions and procedures are prepared at the home office which uniformly govern the operations of the district offices and the duties and functions of the agents. No action may be taken which does not comport with these directives, unless specific home office

approval is obtained. All agents are appointed, initially trained, and terminated at the home office. All labor relations are centrally conducted and all agents receive uniform wages and fringe benefits. There is no recent bargaining history affecting the employees sought by the Petitioner,[2] and no other labor organization seeks a broader unit than the one requested by the Petitioner.

While there would appear to be factors supporting the appropriateness of the units proposed by the Employer, the question remains whether those factors are so compelling as to require a finding that *only* such units are appropriate. Bearing in mind that the Board has recently decided to treat insurance agents the same as any other group of employees, and to apply its normal unit principles to cases before it involving employees in the insurance industry,[3] we now consider the factors relied upon by Petitioner to support its unit contention.

The Petitioner's unit would include all six of the Employer's district offices located in the City of Cleveland and three suburban offices situated 8 or 9 miles from the center of the City. Apart from these, the closest district office is located in Akron, Ohio and is approximately 30 miles from the center of Cleveland and 21 miles from the closest petitioned-for district office. Each district office has a manager in charge, who is the immediate supervisory authority for the employees in the office. Agents are required to perform all of their work through and subject to the general supervision and direction of the manager of the district office to which they are assigned.[4] Most of a debit agent's time is

[2] The Employer had a bargaining contract covering a State-wide unit in Ohio which expired in 1949.

[3] *Quaker City Life Insurance Company*, 134 NLRB No. 114 (Members Rodgers and Leedom dissenting).

[4] The parties have agreed to exclude the managers and assistant managers from the unit, apparently on the theory that they are supervisors within the meaning of the Act.

spent away from the office. However, he is expected to report to the office 2 days a week. On one of these days, the manager conducts a meeting to explain to the agents the latest Company directives. The manager may call an agent to the office at any time in order to review the agent's performance record and to offer suggestions to him as to how he might improve. While the manager does not have the authority to terminate an agent's appointment, he may suggest to the agent that he resign, or he may make a recommendation to the superintendent of agencies to that effect. The manager may order an audit of the agent's accounts whenever he thinks it necessary and, in the event there is a deficiency of $75 or more in the agent's accounts, the manager is required to suspend him until further notice. Recruiting for the district office is normally handled by the manager, who accepts applications, interviews applicants and orders a retail credit and medical report. The application, along with the manager's recommendation, is forwarded to the superintendent of agencies who makes the final determination. At least two-thirds of the time the manager's recommendation is followed. Each district office is visited by the superintendent of agencies on an average of five times a year. However, the manager maintains frequent communications with the superintendent of agencies' office in New York. There appears to be no transfer of agents among the district offices, and there is no business or social contact among these agents except on the district office level. Also, bidding for job openings is confined to the district office.

On the basis of the foregoing, and the entire record, we find that the individual district office is in effect a separate administrative entity through which the Employer conducts its business operations, and therefore is inherently appropriate for purposes of collective bargaining. In reaching this conclusion, we rely particularly upon the fact that each

such office is a complete, self-contained operating unit; that there is a substantial distance between the district offices here involved and the home offic ; that each office is in certain respects autonomous in its day-to-day operations; that there is separate, immediate supervision in each such office; and that there is no transfer or interchange among offices.[5] Although we have found that the individual district offices may constitute separate appropriate units, we do not believe that such a finding should preclude the grouping of such offices where such grouping is justified by cogent geographic considerations. Therefore, as the Petitioner is seeking a unit comprising all of the Employer's offices in a separate and distinct geographic area in the City of Cleveland, Ohio, and as there is no recent history of collective bargaining and no union seeks a broader unit, we find that such a unit may be appropriate for purposes of collective bargaining.[6]

Accordingly, we find that the following employees of the Employer's district offices located in the metropolitan Cleveland, Ohio area, including Brookside, Shaker Heights, Cuyahoga, Forest City, East Side Office, Euclid, Harvard, Lakewood and West Side, constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9(b) of the Act:

All canvassing, regular and office account agents of the Employer selling industrial life insurance and other forms of insurance sold by the Employer, excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and all supervisors as defined in the Act.

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[5] *Quaker City Life Insurance Company, supra; American Linen Supply Co., Inc.*, 129 NLRB 993.

[6] Cf. *The Great Atlantic & Pacific Tea Company, Inc.*, 128 NLRB 342.

The Board's Decision and Direction of Election

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate in paragraph 4 above, as early as possible, but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Insurance Workers International Union, AFL-CIO.

Dated, Washington, D. C. SEP 7 1962

Frank W. McCulloch, Chairman
John H. Fanning, Member
Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

The Board's Decision and Direction of Election

PHILIP RAY RODGERS AND BOYD LEEDOM, MEMBERS, dissenting:

In *Quaker City Life Insurance Company,* 134 NLRB No. 114, we expressed our disagreement with the majority's decision to abandon the principle adopted by the Board 18 years ago in *Metropolitan Life Insurance Company,* 56 NLRB 1635, of avoiding the setting up of units of insurance agents less than State-wide in scope. We adhere to this position, and, for such reason alone, we would dismiss the instant petition.

Apart from our basic disagreement with our colleagues' abandonment of the principle first announced in the *Quaker City* case, we do not believe that the unit sought by the Union here is appropriate. The unit sought, and the one which our colleagues are finding appropriate, consists of the debit agents employed in nine different district offices located in the greater or metropolitan Cleveland, Ohio, area. It seems clear that the only justification for this finding is the geographic location of the offices. We believe this to be no reason for granting this unit. As the majority notes, each of these different district offices operates independently of another, the debit agents in each have separate, immediate supervision, there is no contract among the debit agents of the different offices either on a business or social level. In our view, the debit agents in these different offices do not have a community of interest with respect to the unit sought. Thus the unit which the majority finds appropriate appears to be based upon the Union's extent of organization of these debit agents.

For the foregoing reasons, we would dismiss the instant petition.

Dated, Washington, D. C. SEP 7 1962

Philip Ray Rodgers, Member
Boyd Leedom, Member

NATIONAL LABOR RELATIONS BOARD

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 229

METROPOLITAN LIFE INSURANCE COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Section 9(c)(5) of the National Labor Relations Act provides that, in determining whether a unit is appropriate for collective bargaining, "the extent to which the employees have organized shall not be controlling." The National Labor Relations Board found that a unit consisting of the Company's nine district offices in and around Cleveland, Ohio (six offices within the city limits and three in adjoining suburbs), to

be appropriate for collective bargaining. 138 NLRB 512. The question presented is whether the Board's selection of this unit, concededly proper on the basis of the reasons given by it, may be held to have been controlled by the extent to which the employees have organized, in violation of Section 9(c)(5), because the Board, in other cases involving employers in the insurance industry, consistently approved the unit sought by the union.

The court below answered this question in the negative. Its decision is in accord with decisions of the Third and Fourth Circuits in other cases involving the same legal issue. *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 328 F. 2d 820 (C.A. 3), pending on petition for a writ of certiorari, No. 56, this Term; *National Labor Relations Board* v. *Western and Southern Life Insurance Co.*, 328 F. 2d 891 (C.A. 3), pending on petition for a writ of certiorari, No. 91, this Term; *National Labor Relations Board* v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (C.A. 4). However, the decision of the court below is in conflict with the decision of the First Circuit in *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 327 F. 2d 906, pending on petition for a writ of certiorari, No. 98, this Term.

The government believes that this conflict warrants resolution by this Court, and accordingly has filed a petition for a writ of certiorari to review the First Circuit decision (No. 98, this Term). Moreover, Metropolitan has filed a petition for a writ of certiorari to review the decision of the Third Circuit (No. 56, this Term) and the government has stated

that it does not oppose the grant of that petition if the petition in No. 98 is also granted. The instant case presents the same issue as the First and Third Circuit cases in a substantially identical factual setting. In these circumstances, we suggest that, if the Court grants the petitions in Nos. 98 and 56, it should hold the present petition on the docket pending the decisions in those cases, and then dispose of it in accordance therewith.[1]

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LAURENCE S. GOLD,
Attorney,
National Labor Relations Board.

JULY 1964.

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[1] The government has recommended that the same course be followed with respect to the petition filed in *Western and Southern Life Insurance Co., supra,* No. 91, this Term.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 738075 30